

MIXED SIGNALS: THE ADMINISTRATION'S POLICY ON MARIJUANA, PART TWO

HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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MIXED SIGNALS: THE ADMINISTRATION'S POLICY ON MARIJUANA, PART TWO

Tuesday, March 4, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 1:37 p.m., in Room 2247, Rayburn House Office Building, Hon. John Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica, Massie, and Connolly.

Also Present: Representatives Blumenauer and Cohen.

Staff Present: Will Boyington, Deputy Press Secretary; Adam P. Fromm, Director of Member Services and Committee Operations; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Chief Counsel for Oversight; Emily Martin, Counsel; Katy Rother, Counsel; Jaron Bourke, Minority Director of Administration; Courtney Cochran, Minority Press Secretary; Juan McCullum, Minority Clerk; and Cecelia Thomas, Minority Counsel.

Mr. MICA. Good afternoon. I would like to call this hearing of the House Oversight and Government Reform Committee and the Subcommittee on Government Operations, this hearing to order. Today's hearing is entitled "Mixed Signals, the Administration's Stance on Marijuana." And this is the second in a series of hearings; we held one previously, heard from the Office of National Drug Control Policy. And today we will hear from several witnesses.

I might announce too in advance and also inform the minority staff that we'll be doing a third in this series that will focus on some of the aspects of the effect of marijuana, its potency, and a host of other issues relating to comments that have been brought to date. We'll hear some more issues today. But we plan to continue this review. And that would be our third hearing, and we'll work with the minority staff, the Democrats, to set that. And also invite you to have witnesses to participate in that.

The purpose of our Government Reform and Oversight Committee is just that, to make certain that taxpayer dollars is well spent and that the policy that we have is sound. Among the responsibilities of our subcommittee, Mr. Connolly and I are charged by the charter given to the subcommittee to also deal with a whole host of issues, pretty broad authority, but one of those is issues that relate to State and Federal laws and relationships and mandates and things of that sort. So that's the reason our committee is involved.

My particular personal history is I did—I have chaired two other subcommittees on this full committee. One of them was Criminal Justice, Drug Policy, and actually I think I cited before for the record that I had held the first, probably, hearing on marijuana in Congress, way back in 1998 and 1999, 2000, the time frame in which I chaired that subcommittee. So we are trying to do an honest, thorough, and open review of where we stand on this issue and that's the purpose of this hearing.

The order of business today, I will hear opening statements. And we may be joined by some other Members as they make their way back. This was originally scheduled for another time. I appreciate everyone's cooperation in the quick rescheduling. And I know that the weather has been just an incredible hindrance to conducting our normal affairs. But again, I thank everyone. We may be joined by some other subcommittee members.

And, Mr. Connolly, we are joined by Mr. Blumenauer. And I would entertain a motion.

Mr. CONNOLLY. Mr. Chairman, I would ask unanimous consent that Mr. Blumenauer be allowed participate in this hearing.

Mr. MICA. Without objection, so ordered.

Mr. CONNOLLY. I thank the chair.

Mr. MICA. If we have other—we've had others in the past who are chosen to join us. Again, the order of business would be we hear from members of our panel, and we'll do that first in opening statements and also afford Mr. Blumenauer, others who are not a member of the panel the same opportunity, the same order in questioning if that's suitable. So we'll proceed.

With that, I'll open with some remarks and then I'll yield to Mr. Connolly.

Again, I have to thank our two witnesses. Both Mr. Harrigan from the Drug Enforcement Administration, Mr. Walsh, the U.S. attorney from Colorado, for attending and accommodating the change in schedule.

A month ago, as I mentioned briefly, we heard in our first hearing the Deputy Director of the Office of National Drug Control Policy, Mr. Botticelli. He affirmed that, despite the President's public comments on relative safety of marijuana, that the Office of National Drug Control Policy, which is right under the President in pecking order, it was put under the White House, but that office continues to be opposed to marijuana because marijuana is a dangerous substance. And that was his testimony to us.

What stirred some of this up was the President's comments. And the President in January during an interview said, I don't—speaking—well, I should give his full quote, I don't want to take it out of context. "As has been well documented," President Obama said, "I smoked pot as a kid, and I view it as a bad habit and vice, not very different from the cigarettes that I smoked as a young person, up through a big chunk of my adult life. I don't think it's more dangerous than alcohol." And then he also went on to quote about State legalization efforts. It's important to go forward.

And with the President's commentary with now a number of States changing their laws in regard to medical use and now recreational use, we do have a distinct conflict between State, I called

it the state of conflict and chaos right now, Federal law versus State law and initiatives. But again, we are trying to sort this out.

We've heard from others that, not just ONDC, about the challenge that we now have with States legalizing marijuana for recreational use. But also we have the public perception of risks about marijuana. And we, again, have issues with the increased use of marijuana with our adolescent population. And they are some of our most vulnerable citizens.

As the National Institute of Drug Abuse Director Nora Volkow wrote last year, and I'll quote from her, "Given the current number of regular marijuana users, about one in 15 high school seniors, and the possibility of this number increasing with marijuana legalization, we cannot afford to divert our focus from the central point: Regular marijuana use stands to jeopardize a young person's chances of success in school and in life." And that, again, is an administration official.

The DEA Administrator, Michele Leonhart, affirmed this message in a statement that was made on December 20th, 2013. And let me quote that. "The mixed messages being sent to America's teens about the harmless and legality of using record high potency marijuana are obscuring kids' awareness of the effects their use will have on them. America owes it to its children to give them the best possible start in life so they and society are not hindered in the future." And that's a quote of another administration official.

So today's hearing will go further into looking at the conflicting messages of the administration, also the conflict we have with some State laws, and the current enforcement of Federal laws. We have to see again what is going on there with these 20 States that have legalized marijuana for medicinal purposes and recently, as you know, Colorado and Washington legalized marijuana for recreational use.

I said it last month, but today's hearing, it's particularly important to remember State laws do not change our Federal laws. Federal laws still classify marijuana as a Schedule I drug. That means marijuana is, one, illegal and two, it's classified as—you know, as an illegal narcotic.

Despite the Federal prohibition on marijuana, the Department of Justice that has issued policy memoranda that explicitly decline to enforce the laws. On February 14th, 2014, the Department of Justice issued a memo asserting a similar policy to abstain from prosecuting Federal banking violations associated with servicing marijuana businesses in States that have legal marijuana, these policies create some ambiguity about the true state of the Federal law.

I think we also heard from Mr. Blumenauer last time about some of the conflict in not being able to deal in some of this marijuana cash that's now mounting into—I heard as much as billions of dollars.

The Colorado Bankers Association said this in a response to the February memo: Bank—and let me quote again: "Bankers had expected the guidance to relieve them of the threat of prosecution should they open accounts for marijuana businesses. But the guidance does not do that. Instead it reiterates reasons for prosecution. And is simply a modified reporting system for banks to use. No

bank can comply.” And that was again from the Colorado Bankers Association.

Finally, let me say that the DEA has found the conflicting messages that are being sent out as a growing barrier to effective law enforcement. In an interview with ABC, DEA Assistant Special Agent Gary Hill, said and I’ll quote him, “We catch ourselves in a rock and hard place. We want to enforce Federal laws, but we have times when State laws make it difficult for us to be able to enforce the Federal laws as well.” That’s his quote.

We are here today to hear from DEA. We are also here to take the testimony of the Colorado U.S. attorney about what Federal marijuana enforcement looks like on the ground, where we are going with all this, and how these policies affect our drug enforcement agencies and how these policies that we are now confronting, and sometimes lack of policies, and pretty foggy, hazy, almost marijuana-induced haze on the issue we—there is no question we have a problem and some issues. So we need to air them, see where we are going, and what we are going to do.

With those opening comments, I’m pleased to welcome again, our ranking member, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. And before I begin my statement, may I also ask unanimous consent that our colleague, Mr. Cohen from Tennessee, be allowed—

Mr. MICA. Without objection so ordered.

Mr. CONNOLLY. I thank the chair.

I want to thank you, Chairman Mica, for holding today’s hearing, the second in a series of oversight hearings by our subcommittee to examine Federal policy and laws with respect to marijuana. Today’s hearing is focused on the implementation of DOJ policy guidance addressing Federal marijuana enforcement priorities and the treatment of marijuana-related financial crimes under regulations regulated by FinCEN. As I noted last month, from the outset, I want to be clear, I am not unsympathetic to the concerns raised by skeptics of marijuana decriminalization or legalization. As somebody who grew up in the ’60s, I witnessed firsthand the ravages of drug abuse, and it gave me a permanent revulsion to them and to it. I am a skeptic myself.

However, as a policy maker, I think we have—it’s incumbent upon us to examine the evidence and deal in cold, hard facts. While I remain wary about outright legalization of marijuana, I am just as alarmed by figures that were raised in our prior hearing. For example, in 2011, the FBI reported approximately 750,000 Americans were arrested for a marijuana law violation. That’s one marijuana arrest every 42 seconds. That outpaced significantly the total number of arrests for violent crime that year.

The reality is that no matter one’s normative judgment, to be clear, I share the view that the use of Cannabis is a bad idea. Not very healthy. But a fair examination of the evidence, public health facts, leads to several conclusions. First, our Nation’s decades’ worth of experience combating marijuana use with a policy of criminalization and prohibition has not proved effective in deterring the use of marijuana.

Second, marijuana’s classification is a Schedule I narcotic, which you made reference to, Mr. Chairman, under the Controlled Sub-

stances Act of 1970, must be reconsidered, in light of evidence of legitimate medicinal uses as well as the reality that marijuana, bad idea as it may be to some including me, does not pose a greater threat to public health than some heavy drugs like heroin, LSD, or even prescription drugs or alcohol abuse. It seems to me it's time for our Nation to approach the debate of our marijuana policy with more honesty and less hyperbole.

I was disappointed at our previous hearing when the Deputy Director of the White House Office of National Drug Control Policy was unable to identify the annual rate of deaths in our country resulting from marijuana overdoses and had to be badgered into confirming basic public health facts. It's a disservice to public discourse when policy makers refuse to grapple with challenging and complex issues in a more open and objective manner.

As I noted last month, the Federal Government's ineffectiveness in significantly reducing marijuana use becomes even starker when one contrasts our Nation's failure to stem rising marijuana usage traits with the results of our country's voluntary anti-tobacco campaign. Without resorting to a policy of prohibition and criminalization, our country has brought tremendous resources to bear in an effort to prevent and reduce tobacco use. Most importantly, those efforts are, in fact, working. Our Nation cut the adult smoking rate in half for 42.4 percent in 1965 to 18 percent today. California successfully lowered its adult smoking rate from 16.3 percent in 2000 to 12.7 percent in 2012. And with respect to reducing frequent cigarette use among youth nationwide, CDC reports that the decrease has been dramatic, falling from 16.8 percent in 1999 to just 7.3 percent in 2009.

Our steady progress in reducing tobacco use, along with America's ill-advise attempt at instituting complete alcohol prohibition, serves as a valuable reminder that the best policies to prevent and reduce the use of perceived or real harmful substances need not, and perhaps should not involve total prohibition and criminalization.

Finally, beyond questions of effectiveness, Congress must also not forget the basic issue of inequality. Research by many had found that in 2010, black Americans were four times more likely than whites to be arrested on charges of marijuana possession, even though the utilization of marijuana is roughly equal in both groups. Worse, the data indicates that these racial disparities are even greater when you dig down at the State level, with black Americans being eight times more likely as whites to be arrested in certain States, including Iowa, Illinois, and Minnesota. This level of disparity is indefensible. And I commend the President for refusing to accept the status quo that he accurately summarized as one where "middle-class kids don't get locked up for smoking pot, poor kids do."

As a Member of Congress who approaches this issue from an outsider perspective, at least compared to my colleagues who have been deeply involved in marijuana policy, I have been surprised by the degree to which stakeholders have tended to dwell on differences to the exclusion of the goals shared by all. We would be well served to heed the observation made by the sheriff of King County, Washington State, who testified before Congress in 2013

at a Senate Judiciary Committee hearing very similar to the one we are holding here today, "While the title of this hearing is 'Conflict Between State and Federal Marijuana Laws,' I don't see a huge conflict," the sheriff said. "The reality is we do have complimentary goals and values. We all agree we don't want our children using drugs, we all agree we don't want impaired drivers, we all agree we don't want to continue enriching criminal. Washington's law honors these values, but separating consumers from gangs and diverting the proceeds from the sale of marijuana to furthering the goals of public safety. Is legalizing and regulating the possession and sale of marijuana a better alternative?" He said, "I think it is, and I'm willing to be proven wrong. But the only way we'll know is if we're allowed to try." That's his quote.

I have long believed that the Federal Government governs best when it truly listens and learns from our States, the incubators of democracy. The citizens of States across the country seem to be headed in a direction different than our Federal policy. They want their local governments to have the opportunity to innovate and experiment with regulatory and enforcement frameworks governing marijuana use. And I believe it's in our national interest to let those ongoing laboratories of democracy proceed. With that, I look forward to the testimony, Mr. Chairman. Thank you.

Mr. MICA. Thank you. And I'll ask unanimous consent just to insert in the record after the ranking member's statement some statistics about the increase of use of marijuana by 8th graders since 2008 up 5.8 percent, 10th graders up 13.8 percent, 12th graders up 19 percent.

I just thought since the ranking member mentioned the success we have had in tobacco, we are backsliding on marijuana. It is up to Mr. Connolly. Do you want to give these guys a minute or two?

Mr. CONNOLLY. Certainly, Mr. Chairman.

Mr. MICA. With the consent of Mr. Connolly, recognize first Mr. Blumenauer for any opening comments.

Mr. BLUMENAUER. Thank you very much, Mr. Chairman. I appreciate your interest and follow-through in this important area. And I appreciate the courtesy of the committee being able to participate.

Mr. Chairman, you pointed out at our last hearing, we are talking about \$25 billion, according to the CBO, that is spent on these efforts dealing with drugs in the United States. You also referenced a serious problem that I talked about at the last session we haven't completely resolved in terms of what happens with this never-never land with banking regulations where we have legitimate businesses in Colorado paying their taxes, as we want them to do, with shopping bags full of \$20 bills. Something that anybody who cares about money laundering, who cares about tax evasion, who cares about robbery should not want to embrace. And I hope that the warm signs from the administration are followed up to be able to give it the precision that it needs.

I do appreciate in the testimony, the joint testimony from Mr. Harrigan and Mr. Walsh, the priority statement. Because I think that that's a very important area for us to focus on. And at the top of that list is keeping marijuana out of the hands of our children. And I would hope, as there are different issues and different ap-

proaches that this is something that we could all focus on, that we could agree to and work to try and resolve.

And, Mr. Chairman, I really appreciate you putting in the record the fact that marijuana use is increasing among children. Not as high as tobacco, but it's higher than we would want, it is unacceptable. But I think it underscores the abject failure of our current policy. We have arrested two-thirds to three-quarters of a million people a year. We have the force of law behind it, we've locked people up. We're spending billions of dollars and it's not working. I don't know anybody who thinks the policy is a success.

I think that part of the problem, and as I tried to get at with our witness at the last hearing, is that we have decidedly mixed messages and we're not credible. When the gentleman could not answer, this is the deputy, could not answer what—what is more dangerous, methamphetamine or marijuana, he couldn't give an answer. But any parent of kids, any law enforcement official knows that meth is ravaging American communities. And so the inability to give honest, direct answers: Has anybody died from a marijuana overdose? I had an opportunity to be—participating in a program with the director of CDC this weekend. He wasn't—we were talking about 16,000 people who've died from prescription drugs overdoses. And we chronicle how many die from cocaine, which is allegedly more dangerous under the statute than marijuana. We know these things. He could not name any examples. He thought there may have been one or two. But that's, I think, stunning.

When we can't give our kids and their families straight answers that they know to be—I think it undermines their credibility and it speaks to misplaced priorities. It's not effective in keeping it out of the hands of our kids. We have ought to do that.

One of the things that I'm deeply troubled by is that these antiquated policies dramatically interfere with the research that we need that is able to give better answers. Mr. Chairman, that is something that just deeply troubles me, I was at OHSU, Oregon Health Science University, a few weeks ago talking to people who deal with children with severe cases of epilepsy—and I think this was on the front page of The Washington Post—where some parents are reaching out, they are moving to Colorado to give their children relief from these violent epileptic seizures that just destroy their lives. And it was stunning to me that the researchers who admitted that there are some people that get positive results, but they don't have the wherewithal to do the research to be able to understand what works and what doesn't. It's easier for parents in this strange world of medical marijuana, where we've got 20 States and the District of Columbia, each being a little different, but legal, being able to get access to medical marijuana, than researchers who could help us get the answers that we need and deserve.

Mr. Chairman, Mr. Connolly, I hope that the President or Congress fixes the conflict. And there are ways that we could do that to get these people out of an impossible situation where State law is moving in one direction, where public opinion is moving even faster. But they are caught with an antiquated, outdated, inconsistent, and grotesquely unfair Federal statute. The contrast with tobacco that Mr. Connolly made is stark. I hope we can learn from this.

And, Mr. Chairman, I think these hearings that you're having, opening it up, focusing on it, not ducking the tough questions, is providing a very important service. I'm pleased that you are doing it, and I'm gratified that I can participate with you. Thank you very much.

Mr. MICA. I thank the gentleman.

And, Mr. Cohen, did you have any opening comments?

Mr. COHEN. Thank you, Mr. Mica. I thank you and Mr. Connolly for allowing me to participate. I think this is one of the most important committees, that we—subcommittee hearings we've had since I've been in Congress. Because the basic respect for the law is so important and what we do as legislators, Congress people is pass laws. When there is a law that is so universally looked upon as wrong, a cultural lag where the public doesn't agree with what the law is, it breeds disrespect for the law, for the entire judiciary system. Therefore, it needs to be rectified. Because the foundation of our society rests upon the law. And young people think the law is a joke. And a lot of people that aren't so young think the law on marijuana is a joke, that you're taking people's liberties away.

I want to go back into some history. A gentleman named Richard Bonnie, and I'd like to introduce his letter. He's the Harrison Foundation professor of medicine and law at UVA School of Law. Professor of psychiatry, as well, and we'll get to psychiatry later, and director of the Institute of Law, Psychiatry, and Public Policy. He served as the Associate Director of the National Commission on Marijuana and Drug Abuse from 1971 to '73. Richard Nixon was President. Long time ago. And they had deliberations on this subject of marijuana. And he wrote a paper called "Marijuana: A Signal of Misunderstanding." The Commission and that paper recommended decriminalization for personal use in 1972.

And he said that the Commission only classified marijuana as Schedule I temporarily until studies could come forth. And there were studies available, and he felt clearly that the studies and particularly some other evidence that we've got, Dr. Sanjay Gupta has referred to. From the Assistant Secretary of Health, Dr. Roger Egeberg, who wrote a letter on this, suggesting—he's the one that suggested it would be classified as "I" temporarily until studies could take place. Dr. Egeberg said, "Since there is little"—"still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is marijuana be retained within Schedule I at least until the completion of certain studies now underway to resolve the issue."

So not because of sound science, Dr. Sanjay Gupta said, who changed his opinion on marijuana. But because of its absence, its absence of science, because they never completed the studies, looked at the studies, nor got involved there that it was schedule—Schedule I. That was 1970. And there were studies underway that were never used.

The idea that it's an Schedule I drug is ludicrous. Same as heroin and LSD, as far as their lack of medical benefits and their likelihood of causing addiction. And the DEA could start, Justice Department could start by recommending that it be changed from Schedule I. And it should be changed from Schedule I.

But let me go back to some history, Mr. Chairman. And I think this is shocking to me, but it came to my attention through a Huffington Post article recently. This all started back in the 19—late '30s, Harry Anslinger was the head of DEA and decided that people from the south, Mexico, were getting too involved in our community and our country, and that one way to do something was to start to enforce laws against marijuana, which was before that Cannabis, but “marijuana” sounded more Mexican and objectionable to people that didn’t like Hispanics. So it took on that tone. And they made it illegal. It wasn’t illegal up to that time.

But the war on drugs started under President Nixon. And Mr. Haldeman—some people may not remember, Haldeman and Ehrlichman and these guys were big in the Watergate hearings, but they were the main think tank for President Nixon, if you call that “think.”

Haldeman, in a diary entry of April 28, 1969 said, “He (Nixon) the President of the United States, “emphasized if you have to face the fact that the whole problem”—and this is about drug and the drug war—“is really the blacks. They key—the key is to devise a system that recognizes this while not appearing to.”

So we have started with Anslinger coming down on the Latinos. And then Haldeman says, Nixon did it to get at the blacks, who Mr. Connolly rightfully pointed out are four times more likely to be arrested and eight times more likely to be convicted.

Then we have Mr. Ehrlichman, White House Counsel to President Nixon, in an interview, the author of “Smoke and Mirrors, the War on Drugs and Politics of Failure,” and Mr. Ehrlichman said, “Look, we understand we couldn’t make it illegal to be young or poor or black in the United States. But we could criminalize their common pleasure. We understand that drugs were not the health problem we were making them out to be. But it was such a perfect issue for the Nixon White House, we couldn’t resist it.”

I just want you all to know the underpinnings of the policies that you are carrying out and furthering, the basis of them and where they started and the genesis of them. And then Mr. Ehrlichman said, “We knew we were lying about the health effects on marijuana. We knew we were lying about that. But this is what we were doing to win the election. And it worked.”

43 years ago. Admitted all fantasy. But our law still goes on and we continue to do it. And it’s still Schedule I.

We are abettors, aiders and abettors of Ehrlichman, Haldeman, and Nixon.

Then I think it’s interesting, and sort of has nothing to do with my good friend Mr. Mica, who talked about the schizophrenia of the drug policies. My father was a psychiatrist. I found this really interesting. And I’m Jewish. Some of my colleagues who are for this are not Jewish. But, Mr. Nixon, in talking to Haldeman, his chief of staff, says, “I want a G.D. Strong statement on marijuana. I mean, one on marijuana that just tears the rear out of them. By God, we’re going to hit the marijuana thing. I want to hit it right square in the puss. You know, it’s a funny thing, every one of the bastards out there for legalizing marijuana is Jewish. What the Christ is the matter with the Jews, Bob? What is the matter with them? I suppose it’s because most of them are psychiatrists.”

That is the underpinnings and the genesis of the policy upon which our drug war is being fought. I think it's time to get real and change it.

I thank you for the opportunity to quote these American leaders. Thank you.

Mr. CONNOLLY. Mr. Chairman?

Mr. MICA. Yes.

Mr. CONNOLLY. I have to commend our colleague for an excellent imitation of Richard Nixon.

Mr. COHEN. I am not a crook.

Mr. MICA. Well, we certainly have a diversity. And, Mr. Connolly, when we open this to other Members who aren't on the panel, we get an earful. But I think it's—everyone has their perspective and where they're coming from needs to be aired. So that's the purpose of this hearing.

We'll leave the record open for an additional 7 days for other members that may have statements. Without objection, so ordered.

Now we'll turn to our two witnesses, and I thank them again for being patient and for the rescheduling. We have before us today the Honorable Thomas Harrigan. And he's Deputy Administrator of the Drug Enforcement Administration. And then we have the Honorable John F. Walsh. He's the United States Attorney in Colorado with the Department of Justice.

Gentlemen, I'm not sure if you've testified before our Committee or Subcommittee before, but this is an investigative committee. We do swear in our witnesses. If you'll stand, raise your right hand.

Do you solemnly swear or affirm that the testimony you're about to give before this Subcommittee of Congress is the whole truth and nothing but the truth?

The witnesses have answered in the affirmative, and the record will reflect so. Our custom—we only have two witnesses, but we want to hear from you. We won't—I'm not going to run the clock real tight. But if you have lengthy statements you'd like to have made part of the record, you can do that, or additional information, just through a request of the chair. And we'll proceed.

So let me first recognize and welcome Thomas Harrigan, Deputy Administrator of the Drug Enforcement Administration. Welcome, sir, and you're recognized.

WITNESS STATEMENTS

STATEMENT OF HON. THOMAS M. HARRIGAN

Mr. HARRIGAN. Thank you so much, sir. And I promise not to do any impressions.

But again, Chairman Mica, Ranking Member Connolly, and distinguished members of the subcommittee. On behalf of Administrator Leonhart and the Drug Enforcement Administration, I appreciate your invitation to testify today regarding DEA's response to State efforts to legalize marijuana and our enforcement strategy. And at this time, chairman, I ask that my written statement be made part of—

Mr. MICA. Without objection, so ordered.

Mr. HARRIGAN. I'd like to begin with a few facts. One, marijuana is the most widely available and commonly abused illicit drug in

the United States. According to the 2014 National Drug Threat Survey, more than 80 percent of the responding agencies reported that marijuana was readily available in their jurisdictions. The greater availability of marijuana is due in part to domestic indoor grow operations and States permitting the cultivation of marijuana for medical and recreational purposes.

Number two. The number of people reporting use of marijuana within the past month increased 21 percent from 2007 to 2011. In each of those years, the number of people reporting marijuana abuse was greater than all other drugs combined.

Number three. As the perceived danger of marijuana use has decreased, abuse among adolescents is increasing. According to the Monitor the Future Survey, since 2009, more students have been smoking marijuana than cigarettes.

Number four. There was a 59-percent increase in marijuana-related emergency room visits between 2006 and 2010. Marijuana was second only to cocaine for illicit drug-related emergency room visits in 2010.

Five. Today's marijuana is many times more potent than it was in the past. Between 2007 and 2011 alone, the average percentage of THC in marijuana increased 37 percent.

Number six. Marijuana remains a Schedule I controlled substance under the Controlled Substances Act and has no scientifically accepted medicinal use, is addictive, and has a high potential for abuse.

DEA will continue to aggressively enforce the Controlled Substances Act by identifying and investigating any criminal organization or individual who unlawfully grows, markets, or distributes marijuana or other dangerous drugs.

DEA supports our State and local counterparts through joint investigations and through the domestic Cannabis eradication and suppression program which targets marijuana cultivation by providing resources to 127 law enforcement agencies across the country.

Last year, investigations related to this effort led to the eradication of more than 4.3 million marijuana plants grown in the U.S., the seizure of over \$29 million in assets, more than 4,000 weapons and 121,000 pounds of processed marijuana.

Both domestically and internationally, DEA continues to work with our international law enforcement counterparts in identifying and combating drug trafficking organizations that pose the greatest threat to the American public. These threats are real, as we have seen international trafficking organizations exploiting the changes in State marijuana laws, including owning and operating sham marijuana businesses under the guise of legitimate commerce.

The United States has a proud history of protecting its people and ensuring the common good based on science and well-reasoned policy, not changes in public opinion. For decades we have known that driving under the influence kills people, smoking causes cancer, and wearing seat belts and using infant car seats saves lives. In response, legislatures, including this one, have enacted sensible laws based on established science and proven statistics.

We also know that marijuana destroys lives and families, undermines our economy, and insults our common values. There are no

sound scientific economic or social reason to change our Nation's marijuana policy. Treatment professionals, drug education teachers, and the families of those touched by drug abuse ask why States should now legalize a Schedule I psychoactive drug, given all that we know. My Federal, State, and local law enforcement counterparts know all too well the devastating effects of drug use and how it extends into so many areas of our economy, communities, and families. Even our international law enforcement partners question us when we ask them to enact and enforce drug laws. They question why we are ignoring established scientific facts and the 50-year-old international drug treaties while creating new drug marketplaces in the U.S.

Illicit drugs like marijuana threaten our institutions and society. By not enforcing our drug laws, we bring these dangers to our doorstep. We must send a clear message to the American people and ensure our public safety by not abandoning science and fact in favor of public opinion. For our part, the men and women of the DEA remain committed to enforcing our Federal drug laws and protecting our national interest. I thank you for your time and look forward to your questions.

[Prepared joint statement of Thomas M. Harrigan and John F. Walsh follows:]

Joint Statement of
John F. Walsh, United States Attorney, District of Colorado
and
Thomas M. Harrigan, Deputy Administrator, Drug Enforcement Administration
United States Department of Justice
Before the Committee on Oversight & Government Reform
Subcommittee on Government Operations
March 4, 2014

Good afternoon Chairman Mica, Ranking Member Connolly, and distinguished Members of the Committee. We are pleased to speak with you about the guidance that the Department issued to all United States Attorneys regarding marijuana enforcement efforts and the guidance that the Department recently issued to all United States Attorneys regarding marijuana-related financial crimes. The marijuana enforcement guidance issued on August 29, 2013 (August 29th memorandum), advises federal prosecutors in the exercise of their prosecutorial discretion to focus on and continue enforcement of federal priorities, such as preventing sales of marijuana by criminal enterprises, preventing violence and the use of firearms in the cultivation and distribution of marijuana, preventing distribution to minors, and preventing the cultivation of marijuana on public lands – priorities that we historically have focused on for many years – and also notes that we will continue to rely on state and local authorities to effectively enforce their own drug laws as we work together to protect our communities. The recent guidance regarding marijuana-related financial crimes, issued by the Department on February 14, 2014 (February 14th memorandum), addresses public safety issues posed by these state-licensed and regulated cash driven businesses.

I. Introduction

As you know, the relevant federal statute, the Controlled Substances Act of 1970 (CSA), among other prohibitions, makes it a federal crime to possess, grow, or distribute marijuana, and to open, rent, or maintain a place of business for any of these purposes. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA).

For many years, all 50 states had uniform drug control laws or similar provisions that mirrored the CSA with respect to their treatment of marijuana and made the possession, cultivation, and distribution of marijuana a state criminal offense. With such overlapping statutory authorities, the federal government and the states have worked as partners in the field of drug enforcement. Federal law enforcement has targeted large-scale drug traffickers and organizations, while state and local authorities generally have focused their enforcement efforts, under their state laws, on more localized and localized drug activity.

Starting with California in 1996, several states have authorized the cultivation, distribution, possession, and use of marijuana for medical purposes, under state law. Colorado authorized the use of marijuana for medical purposes in 2000. Today, twenty-one states and the District of Columbia legalize marijuana use for medical purposes under state law, including six states that enacted medical marijuana legislation in 2013. And in 2012, voters in Colorado and Washington approved state constitutional changes legalizing recreational marijuana under state law and establishing state regulatory systems for recreational marijuana.

Throughout this time period, the Department of Justice has continued to work with its state and local partners, but focused its own efforts and resources on priorities that are particularly important to the federal government. The priorities that have guided our efforts are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Examples of our efforts have included cases against individuals and organizations that were using the state laws as a pretext to engage in large-scale trafficking of marijuana to other states; enforcement against those who were operating marijuana businesses near schools, parks, and playgrounds; and enforcement against those who were wreaking environmental damage by growing marijuana on our public lands. In the District of Colorado, the U.S. Attorney's Office has targeted enforcement actions against marijuana businesses and residential grow sites near schools. The U.S. Attorney's Office warned these businesses through a letter campaign that their actions violated federal law. Every business that received a letter closed or relocated voluntarily. In one criminal action, a defendant was convicted in 2011 for creating a residential grow house of over 200 marijuana plants within 1000 feet of a public elementary school. In addition, we have actively investigated and prosecuted cases involving international smuggling and interstate shipment of marijuana, marijuana growing operations where firearms and violence are involved, marijuana cultivation on public lands, and cases with potential organized crime involvement in

marijuana businesses. In these instances and historically, the Department has not devoted our finite resources to prosecuting individuals whose conduct is limited to possession of marijuana for personal use on private property.

As these enforcement efforts reflect, the Department is committed to enforcing the Controlled Substances Act by focusing its resources on these key federal priorities and by working closely with our state and local law enforcement partners. Marijuana is the most widely available and commonly abused illicit drug in the United States. According to the 2014 National Drug Threat Survey, 80 percent of responding agencies reported that marijuana availability was high in their jurisdictions. Availability increases are due to large-scale marijuana importation from Mexico and Canada, as well as increasing domestic indoor grows and marijuana cultivation in states that have legalized marijuana or passed medical marijuana initiatives. Abuse among adolescents is increasing and the medical consequences of marijuana abuse are rising. Further, marijuana concentrates, produced with new and dangerous extraction methods that elevate their THC content, are an increasing concern to law enforcement and public health officials.

II. The Department's Updated Marijuana Enforcement Guidance

In November 2012, voters in Colorado and Washington State passed ballot initiatives that legalized, under state law, the possession of small amounts of marijuana, and made Colorado and Washington the first states to provide for the regulation of marijuana production, processing, and sale for recreational purposes. The Department of Justice has reviewed these laws in the context of our enforcement priorities.

On August 29, 2013, the Department notified the Governors of Colorado and Washington that we were not at this time seeking to preempt their states' laws. We advised the Governors that we expected their states to implement strong and effective regulatory and enforcement systems to fully protect against the public health and safety harms that are the focus of our marijuana enforcement priorities, and that the Department would continue to investigate and prosecute cases in Colorado and Washington in which the underlying conduct implicated our federal interests. The Department reserved its right to challenge the state laws at a later time, in the event any of the stated harms do materialize – either in spite of a strict regulatory scheme, or because of the lack of one.

That same day, the Department issued a guidance memorandum to all United States Attorneys directing our prosecutors to continue to fully investigate and prosecute marijuana cases that implicate any one of our eight federal enforcement priorities. This memorandum applies to all of our federal prosecutors and guides the exercise of prosecutorial discretion against individuals and organizations that violate any of our stated federal interests, no matter where they live or what the laws in their states may permit. Outside of these enforcement

priorities, however, the Department will continue to rely on state and local authorities to address marijuana activity through enforcement of their own drug laws. This updated guidance is consistent with our efforts to maximize our investigative and prosecutorial resources, and with the more general message the Attorney General has delivered to all federal prosecutors, emphasizing the importance of quality priorities for all cases we bring, with an eye toward promoting public safety, deterrence, and fairness.

The August 29th memorandum itself did not expressly discuss what impact it would have on marijuana-related financial crimes. The February 14th memorandum states clearly that the provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. The guidance advises federal prosecutors to assess marijuana financial crimes under the eight federal enforcement priorities laid out in the August 29th memorandum. The guidance also advises that financial institutions that service marijuana-related businesses, but are in clear compliance with Treasury Department's Financial Crimes Enforcement Network (FinCEN) regulations and FinCEN's February 14 guidance memo, are not likely to implicate the eight federal enforcement priorities. The Department expects financial institutions to continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers. This includes conducting customer due diligence consistent with any guidance issued by FinCEN.

The Department's guidance also makes one overarching point clear: the Department of Justice expects that states and local governments that have enacted laws authorizing marijuana-related conduct will implement effective regulatory and enforcement systems to protect federal priorities and the health and safety of every citizen. As the Department's guidance explains, a jurisdiction's regulatory scheme must be tough in practice, not just on paper. It must include strong enforcement efforts, backed by adequate funding. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.

We emphasize comprehensive regulation and well-funded state enforcement because such a system will complement the continued enforcement of state drug laws by state and local enforcement officials, in a manner that should allay the threat that a state-sanctioned marijuana operation might otherwise pose to federal enforcement interests. Indeed, a robust system may affirmatively address those federal priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In

those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain a necessary part of addressing marijuana-related activity.

For that reason, we in federal law enforcement in Colorado and Washington are working hard with our state and local enforcement partners to ensure that our efforts are mutually supportive. For the overall regulation of marijuana to be effective and public safety to be protected, state, local and federal law enforcement need to cooperate and work together. That's the message we have been sending, and will continue to send – and to implement.

III. Conclusion

The Department of Justice is committed to enforcing the CSA in all states, and we are grateful for the dedicated work of our Drug Enforcement Administration agents, our federal prosecutors, and our state and local partners in protecting our communities from the dangers of illegal drug trafficking. In Colorado, the U.S. Attorney's Office and DEA work hand-and-hand in this effort, and work closely with state and local law enforcement in this area as well. Our goal is to ensure by that cooperation that we are effectively focused on the eight federal enforcement priorities outlined in the August 2013 and February 2014 guidance from the Department. And as a final note, the Department also remains committed to minimizing the public health and safety consequences of marijuana use, including support for prevention, treatment, and recovery programs.

As our guidance reflects, we continue to target conduct that implicates federal priorities and causes harm, regardless of state law. We expect our state and local partners to continue to do so as well. In those jurisdictions that have enacted laws that legalize and seek to regulate marijuana for some purposes, this means that strong and effective regulatory and enforcement systems must address the threat those state laws could pose to public safety, public health, and other law enforcement interests.

We look forward to taking your questions.

Mr. MICA. Thank you. And we'll hear next from Mr. Walsh, Mr. John Walsh, before we get to questions. He's the U.S. attorney in Colorado, the Department of Justice. Welcome, sir, and you are recognized.

STATEMENT OF HON. JOHN F. WALSH

Mr. WALSH. Thank you, Chairman Mica, Ranking Member Connolly—

Mr. MICA. I don't think your mic is on.

Mr. WALSH. I'm sorry. Good afternoon, chairman. And good afternoon, Ranking Member Connolly and other members of the committee and other—of the House who are attending here today.

On behalf of the Attorney General and the men and women of the Department of Justice, I appreciate the opportunity to testify here today. My testimony is going to focus today on our marijuana enforcement efforts, and also the guidance that the Department of Justice has issued to all U.S. attorneys around the country regarding those efforts. I also appreciate the opportunity to discuss our efforts specifically in Colorado to ensure that Federal, State, and local law enforcement work together effectively to protect public safety and public health in the new marijuana enforcement environment that we are seeing.

And I must add, it is a great honor to be here with Deputy Administrator Harrigan of the DEA.

Now, as you know, the relevant Federal statute, the Controlled Substances Act of 1970 among other things makes it a Federal crime to possess, grow, or distribute marijuana. In addition to that, financial transactions involving proceeds generated by marijuana-related conduct can form the basis for Federal prosecution under money-laundering statutes as well as the Bank Secrecy Act, among other statutes.

Starting with California in 1996, a total of approximately 21 States—I say that because I've seen 20 and 21 both mentioned—have authorized the use of marijuana for medical purposes. My State, my home State, Colorado, first authorized the medical use of marijuana in 2000, now 14 years ago. And in 2012, voters in Colorado and in Washington State approved State constitutional changes that legalized recreational marijuana and also established State regulatory systems to address the recreational marijuana market. Federal law enforcement of course has always focused on sophisticated drug trafficking organizations while State and local authorities have focused most of their drug enforcement activity on more localized actions, even though that often includes drug trafficking organizations. During this entire period, the Department of Justice has worked closely with its State and local partners to ensure the public safety and health of citizens in every State.

I cannot overstate the importance of strong partnerships and coordination between Federal, State, and local law enforcement today in this changing environment. For that reason, we in Federal law enforcement in Colorado, and I know also in Washington State, are working hard with our State and local law enforcement partners to ensure that our efforts are mutually supportive. For the overall regulation of marijuana to be effective and for public safety and

health to be protected, all levels of law enforcement are going to have to work together.

Now, as you also know, in August of 2013, the Department issued marijuana enforcement guidance to Federal prosecutors across the country. On that same day, the Attorney General spoke to the Governors of Washington and of Colorado and informed them that the Department as part of its policy expected the States that had legalized recreational marijuana to implement strong and effective regulatory and enforcement systems to fully protect against the public health and safety harms that are the focus of Federal marijuana enforcement. He also indicated that the Department would continue to investigate and prosecute cases in which the underlying marijuana-related conduct implicated Federal interests.

So, specifically, in that August guidance from Deputy Attorney General Jim Cole, the Department outlined eight Federal enforcement priorities in the marijuana arena. My office has historically devoted a great deal of time and effort to prosecuting cases in exactly those eight priority areas. For example, we have targeted enforcement actions against marijuana businesses located near schools which implicates the possibility of sales, whether directly or indirectly to kids.

My office warned dozens of those businesses through a letter campaign in 2012 and 2013 that their agencies violated Federal law. And every one of those businesses that received a letter closed without the need for further litigation by our office.

We also continue to actively investigate and prosecute cases involving international smuggling and interstate shipment of marijuana, marijuana grows where violence and firearms are involved, marijuana grows on public lands, an issue in a State like Colorado that has as much Federal public land as we do, and cases with potential organized crime involvement in marijuana businesses.

Now, consistent with the guidance we have received from the Department, the U.S. Attorney's Office in Colorado does not now and has not in my time there ever focused on prosecuting individuals who are using marijuana in personal-use amounts on private property.

In addition, in February of 2014, the Department issued guidance to all Federal prosecutors regarding marijuana-related financial crimes. That guidance seeks to mitigate the legitimate public safety concerns created by high-volume, cash-driven businesses that do not have access to banking or the financial system, but at the same time, to ensure that organized crime and other cartel groups are not able to use marijuana businesses as a pretext or a cover to launder funds obtained in other criminal conduct, sale of other drugs, and things of that sort.

Now, in Colorado, the U.S. Attorney's Office and the Drug Enforcement Administration work together closely to protect the health and safety of every citizen. I want to take this moment to earnestly thank Federal prosecutors in my office, DEA agents in Colorado, but also Federal prosecutors throughout the west, and particularly, in this instance, and DEA agents who are dealing with this rapidly evolving and changing set of marijuana enforcement issues. I also want to thank our many State and local part-

ners, sheriffs, police chiefs, and State regulators for their dedicated work in trying to address this issue.

With our collective effort, and only with our collective effort, we can succeed in implementing strong and effective marijuana enforcement and regulatory systems in practice on the ground.

Thank you very much. And I look forward to our discussion.

Mr. MICA. Thank you. And we'll get a few questions in and turn to members to ask them.

Let me let Mr. Harrigan with a couple of them. Since I guess the first announcement that came out on 2013—2013 August, when DOJ said, again, from the enforcement end, they were not going to pursue some of these cases, what's happened? What's the impact?

Mr. HARRIGAN. Well again, thank you for the question, chairman. Again, as U.S. Attorney Walsh alluded to in his opening statement, DEA works very closely with our United States Attorneys, whether it's in Colorado, whether it's in the State of Washington. DEA, because of limited resources, throughout the years, we have always focused on the most prolific drug-trafficking organizations in the United States and in the world, principally those having the greatest impact on the United States.

So, that being said, based upon Deputy Attorney General Cole's memo, to date, there has been little impact on our enforcement actions again because we continue to identify and investigate the most prolific drug-trafficking organizations impacting our cities. We do not go after those abusers, users of drugs. We don't go after users claiming marijuana use for medical reasons. So again, sir, as of now, there has been little effect or impact on DEA's operations.

Mr. MICA. Mr. Walsh, you've had to deal with this, and—and, you know, there—that we've had conflicts and comments from various agencies at the Federal level. How do you see this coming down? The President said he thought Congress could act to change the scheduling. But the administration also has that authority to change the scheduling. We have more States now adopting medical use, and it looks like recreational use isn't too far behind. What's your take?

Mr. WALSH. Thank you, Mr. Chair. It's an interesting set of circumstances that we have in Colorado. One of the, really, the foundations for the guidance that the Department issued in August of 2013 was the idea that a State that legalizes marijuana, whether for medical or for recreational purposes, needs to establish an effective and robust regulatory system on the ground. In other words, that if a State is going to do that, there is the risk that serious and significant Federal interests are going to be implicated unless the State takes the necessary steps to ensure that the regulatory system is effective. So let's start with that. How does that play out on the ground in our work?

In order to be sure that in Colorado, which is my home State and that I love deeply, is not negatively impacted by the legalization of recreational marijuana, we want to be sure that what we do on the Federal side, working closely with the DEA, is supportive of what State regulators and State law enforcement officials are trying to do to make sure that the situation is effectively and tightly regulated on the ground.

So my message to my law enforcement partners throughout the State of Colorado, since August of 2013, has been that we have to work together. We have to work together carefully, despite the fact that the laws differ at the State and Federal level, we have to work together to make sure that those common goals that we all share that I think are embodied pretty well in the eight guidance priorities that we were given in August of 2013 are achieved.

Mr. MICA. Well, Mr. Blumenauer, in our previous hearing, talked about the huge amounts of cash and the illegality of processing that money through the current financial system.

And then in February 2014, DOJ guidance changed and came out with other—other guidelines. Can I take my marijuana- gained cash and run it through the traditional banking system, and am I going to jail? Or is it now acceptable financial transaction?

Mr. WALSH. Mr. Chair, I think it's important to remember that the guidance that was issued was really in the form of two different memos. There was a Department of Justice memo that went from the Deputy Attorney General to all Federal prosecutors on the question of financial crimes related to marijuana. And what that memo did, in essence, was to say that the same eight priority factors that we apply in considering marijuana enforcement generally apply to banking crimes as well. So that's step one.

The other memo that came out, which was step two, was actually issued by the Department of Treasury, FinCEN. And what FinCEN's guidance—that memo was directed to banks. And essentially—and I don't want to step into the Department of Treasury's lane on this—but essentially, set out the rules of the road for how a bank, if it were to choose to do business with a marijuana-industry business licensed in Colorado, for example, what reporting obligations would it—should it follow in order to be in compliance with its Bank Secrecy Act obligations?

So we have those two different components of that guidance. Nothing in either of those memos says to a bank, you should or shouldn't actually do business with a marijuana business. On the other hand, it does try to clarify the circumstances under which a bank could, in fact, proceed in doing business with a marijuana licensed business in a State like Colorado.

Mr. MICA. Okay. Mr. Harrigan, you just heard Mr. Walsh. And it sounds like that from a criminal standpoint you still go after people who are dealing and trading in “illegal terms.” There's some—now that we've got a new definition, I guess there is legal business activity, medical marijuana, and recreational. We got the second part of the enforcement. What's happening in regard to your enforcement responsibilities to carry out these sort of dueling guidances?

Mr. HARRIGAN. Well, again, chairman, it's a—a bit premature now to comment exactly what's happening. Because, again, this is just about 2 months since these initiatives were put into practice. However, let me say this—

Mr. MICA. So you're still scratching your head?

Mr. HARRIGAN. I scratch my head every day, sir; you have no idea.

Mr. MICA. I shouldn't have interjected.

Mr. HARRIGAN. That's okay. You're the chairman; you can do anything you want.

Cash—

Mr. CONNOLLY. For God's sake, don't tell him that.

Mr. HARRIGAN. He asked me to say that.

Cash, as you very well know, is—is the driving force for these drug-trafficking organizations. The way I look at it, drug-trafficking organizations aren't particularly in the business to traffic drugs. They are in the business to make money. So any time they can exploit, whether it's a change in State laws, a changing in the banking industry, and what is legal and is not illegal, they are going to exploit it.

We have right now, and obviously because they are ongoing investigations, I cannot comment. I'm not at liberty to comment on them. But we've already seen organizations, foreign drug-trafficking organizations attempting to exploit these new banking laws.

So, again, as John just mentioned, we will work very closely with Treasury, with the banking industry, and with the U.S. Attorney's Office. And we'll have to make a decision right now on a case-by-case basis.

Mr. MICA. Sounds like we may be doing some additional hearings.

Mr. Connolly, I yield to you.

Mr. CONNOLLY. Thank you, Mr. Chairman. I thank you both for your testimony.

I want to deal with two things: Efficacy and equality. Equal protection under the law. And when you look at both of those two E words, one cannot be but troubled by the facts at hand with respect to marijuana, particularly, it seems to me.

Mr. Harrigan, if I understood your testimony correctly, your view is it's the soundness of our current policies and laws is beyond question, and we just need to buckle down and do more of it.

Mr. HARRIGAN. Well, sir, the bottom line is this: I am not a medical or a health care professional, I am a career cop. I am a special agent.

Mr. CONNOLLY. But you asserted in your testimony, Mr. Harrigan, that the science, you invoked the word "science." Tell us about that.

Mr. HARRIGAN. Absolutely. And again, I base my opinion on what science has said. Whether it's the AMA, the American Medical Association, the American Cancer Society, and a whole host of other health care organizations who have said that marijuana is dangerous and it deserves to be in Schedule I. That is what I base it on, sir.

Mr. CONNOLLY. I have to interrupt a little bit. Forgive me. Because I don't have all the time in the world. And I really do want to dialogue with you on this.

I understand you're invoking them. But you would agree, or—no. Would you agree that marijuana is certainly not in the same category as heroin in terms of its danger?

Mr. HARRIGAN. Mr. Connolly, and, again, these decisions aren't made in a vacuum. When I say DEA, also HHS is involved, FDA and NIDA. However, the way it is—again, it is a Schedule I controlled substance.

Mr. CONNOLLY. I understand. How many people died from marijuana overuse last year?

Mr. HARRIGAN. That I don't believe many, sir.

Mr. CONNOLLY. Heroin?

Mr. HARRIGAN. I would assume thousands.

Mr. CONNOLLY. A lot?

Mr. HARRIGAN. Yes, a lot.

Mr. CONNOLLY. Even legal prescription drugs, we have an overdose every 19 minutes in the United States of America. Nobody can come up with any comparable statistic. I'm not saying marijuana, therefore, you know, is the best thing since sliced bread. But it might suggest that treating it as a controlled substance, like we do tobacco or alcohol, may be a better way of going, especially if you're worried about organized crime.

The Chairman—the other chairman, excuse me, Mr. Massie. The other chairman read into the record contrasting statistics for youth use of marijuana versus tobacco. And I would simply suggest, yeah, what's the difference? The difference is tobacco is regulated and taxed, and we can leverage that fact and actually affect positively behavior.

Marijuana is neither taxed nor regulated. And as a result, our ability to influence young people's behavior and their use of this illicit drug is quite limited.

Now, but the question is, is it working? We've had a war on drugs since Richard Nixon. So is marijuana use in America, after all your fine efforts as DEA and that of other law enforcement agencies, is marijuana use in the United States on the way down or on the way up?

Mr. HARRIGAN. I believe recent statistics will show it's on the way up.

But if I can say, sir, just two things. Since 1979 through 2012, overall drug use has declined in this Nation by 35 percent. I think that's pretty significant. And, again, we're not going to arrest ourselves out of this problem. I absolutely agree with you. But it must be a holistic approach.

Mr. CONNOLLY. What percentage, because we're talking about, I'm going to get to you Mr. Walsh, but we're talking about money. The role of money.

Mr. CONNOLLY. What percentage, because we are talking about—and I am going to get to you, Mr. Walsh—but we're talking about money, the role of money. And, of course, you know, it's all cash. Druggies don't take credit cards. What percentage would you guess of total illicit narcotics traffic money is marijuana related?

Mr. HARRIGAN. Well, that's very difficult, Mr. Connolly, to speculate. Again, most of the drug-trafficking organizations that DEA are involved with and with respective U.S. Attorney's Office are multinational cartels, they're poly drug. So it's not just marijuana. Marijuana without question generates a great deal of revenue for these drug trafficking organizations, but again, they're not a one-trick pony, if you will. They also traffic in cocaine, in heroin, in methamphetamine and obviously in marijuana as well, so it's very difficult to pinpoint exactly how much is generated from marijuana.

Mr. CONNOLLY. Mr. Chairman, I think we agreed on 2 more minutes of my—your—

Mr. MASSIE. [Presiding.] Without objection.

Mr. CONNOLLY. I thank the chair.

Mr. Walsh, the other issue, inequality. Efficacy I'll leave where we just left it. Count me a skeptic, Mr. Harrigan. I think after almost half a century of experience, I don't think we're winning this war, and I don't even know if this is a war to be won with respect to marijuana.

Mr. Walsh, are you troubled by the statistics I read into the record with respect to arrests and incarceration rates, the inequality among whites and nonwhites?

Mr. WALSH. Mr. —

Mr. CONNOLLY. You have to turn on your—

Mr. WALSH. Oh, I'm sorry. I have to leave that on, I think.

Congressman, you know, the Department of Justice is focused on the question of ensuring equity in the way that the drug laws are enforced. In fact, last August, right around the time the marijuana enforcement guidance was issued, the Attorney General announced his Smart on Crime initiative. In part, that was intended to make sure that we in the Federal Government have a balanced approach, where enforcement remains, anti-drug enforcement remains an important component, but we also build into it prevention—

Mr. CONNOLLY. Mr. Walsh, again, because of the limited time, I thank you, and that's aspirationally very noble, but the record is wretched.

Mr. WALSH. It—and I—

Mr. CONNOLLY. We certainly have not lived up to our own any kind minimum standard of equality with respect to the meting out of justice on this subject on racial lines, have we?

Mr. WALSH. I think that there is room to be concerned about the way that has played out in effect, but I do want to say, Congressman, something very important. I have worked for decades in Federal law enforcement, and I can tell you that the law enforcement agents at DEA, assistant U.S. Attorney's all across the country work very hard to enforce the laws that are on the book, and they are very diligent and they are very careful not to enforce them in a way that they believe to be disparate.

If the numbers turn out that way, it's important for us to be very careful, because sometimes I think the discussion makes it unclear to the public. We have a lot of wonderful public servants who are doing the work—this work to protect the public, and they will continue to do so—

Mr. CONNOLLY. Well—

Mr. WALSH. —but it's not based on race.

Mr. CONNOLLY. No, it may not be, but it just leads to a—it leads to an outcome that most certainly is racially divided in very stark terms.

I want to end with a quote from Rand Paul, Republican senator from Kentucky, no liberal. He described this issue as the new Jim Crow, and I quote, this is his testimony before the Senate Judiciary Committee last year about this issue, "If I told you that one out of three African-American males is forbidden by law from voting, you might think I was talking about Jim Crow 50 years ago, but I'm talking about today. A third of African-American males are prevented from voting because of drug convictions." He went on to

share that the majority of illegal drug users and dealers nationwide are white, but three-fourths of all people in prison for drug offenses are African-Americans and Latinos, despite your aspirations, Mr. Walsh.

Thank you, Mr. Chairman.

Mr. MASSIE. Gentleman's time has expired. I now yield myself 5 minutes.

Mr. HARRIGAN, is it safe to assume, in light of the August 2013 Department of Justice memo, that as long as States like Kentucky have implemented a strong and effective regulatory and enforcement system, the cultivation of industrial hemp will be permitted by the Department of Justice when in accordance with State laws?

Mr. HARRIGAN. Well, Mr. Chairman, that is under policy review right now at the Department of Justice, so that is something we will certainly get back to you on.

Mr. MASSIE. Wouldn't it seem reasonable that if they can grow marijuana for recreational purposes and medicinal purposes in Colorado, that in Kentucky, you could grow hemp, which has no psychoactive amount of THC, that in Kentucky, we could grow hemp for industrial purposes?

Mr. HARRIGAN. Well, again, sir, that is under policy review right now at the Department of Justice, and it would be premature for me to comment on it before a decision is made.

Mr. MASSIE. Do you know when they might have a decision for us?

Mr. HARRIGAN. No, I don't, but I'd be happy to get back to you, sir.

Mr. MASSIE. Okay. Thank you very much.

And that's all the time that I need right now. I'm going to yield—

Mr. CONNOLLY. Wow.

Mr. MASSIE. —5 minutes to Mr. Blumenauer.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

Could you—Mr. Harrigan, we didn't get a copy of your—the statement that you read. Could you read what you said about emergency room visits?

Mr. HARRIGAN. Sure. I assume you're referring to and, again, point number four, there was a 59 percent increase in marijuana-related emergency room visits between 2006 and 2010. Marijuana was second only to cocaine for illicit drug-related emergency room visits in 2010.

Mr. BLUMENAUER. Thank you.

Mr. HARRIGAN. You're welcome.

Mr. BLUMENAUER. You know, it's interesting, we had, in our previous hearing, discussion about emergency room admissions for marijuana. Since then, I've been trying to find an emergency room doctor who has treated somebody who has been admitted for marijuana. They say it's likely that there are people who had marijuana in their system, like people could have nicotine in their system or have alcohol in their system, but I have had numerous conversations with emergency room doctors trying to understand what this means.

I'd respectfully request that you would—I don't want to catch you unawares, but I'd like you to provide the committee in writing

what you're talking about, because it doesn't square. Have you talked to an emergency room doctor that has had somebody admitted for a marijuana overdose?

Mr. HARRIGAN. I have personally not, sir, but again, we'd be happy to——

Mr. BLUMENAUER. Okay. I don't want to——

Mr. HARRIGAN. —get you——

Mr. BLUMENAUER. I don't want to trap you.

Mr. HARRIGAN. —the statistics.

Mr. BLUMENAUER. I don't want to trap you.

Mr. HARRIGAN. That's fine.

Mr. BLUMENAUER. I want to find out what these statistics mean, because emergency room doctors that I talk to think it's silly.

Mr. HARRIGAN. Actually, sir, this was——

Mr. BLUMENAUER. In fact, I——

Mr. HARRIGAN. I see—if I could respond to you.

Mr. BLUMENAUER. I don't have very much time left. I invite you to provide it in writing.

Mr. HARRIGAN. Okay.

Mr. BLUMENAUER. I want to ask how many people died from marijuana overdoses?

Mr. HARRIGAN. I'm not aware of any, sir.

Mr. BLUMENAUER. You put out information, for example, on prescription drug overdoses, right?

Mr. HARRIGAN. Yes.

Mr. BLUMENAUER. 16,000 people——

Mr. HARRIGAN. Yes, we did.

Mr. BLUMENAUER. —last year. I would like you to provide, again, I don't want to trap you, but in writing, so it can be vetted, why you don't know whether or not anybody died from marijuana overdose.

Third, I would love to have the evidence from the AMA that you cited that AMA says that marijuana should be a Schedule I drug. Again, I have not seen that. It would be very helpful to be able to have this.

My last question, I'd like to follow up a little bit with my friend from Kentucky—because we've got a massive drug problem in this country, we're spending \$25 billion, drug use is going up, we're shifting money to drug cartels—how does the DEA justify working against the legalization of industrial hemp in this whole range of activities that you are tasked with protecting the American public?

Mr. HARRIGAN. Well, again, sir, it is not just DEA. There are several components——

Mr. BLUMENAUER. No. I'm asking specifically about DEA——

Mr. HARRIGAN. Well, we're——

Mr. BLUMENAUER. —because you're from DEA.

Mr. HARRIGAN. Yes, sir. We are involved in the decisionmaking process. It simply is that. We will provide detailed documents, information that we have, but it's part of an overall decision that will eventually be made by the Department of Justice.

Mr. BLUMENAUER. How does DEA justify taking scarce resources when we have 16,000 people dying from drug overdose, when we've got a heroin epidemic that is worrying in communities across the

country, how can you justify devoting scarce resources to opposing industrial hemp legalization?

Mr. HARRIGAN. Sir, I don't quite understand what you mean by sending scant resources to do this. We have people who are involved in the process. It's not as though it is requiring our agents out on the street—

Mr. BLUMENAUER. Again, I don't want to—

Mr. HARRIGAN. —to enforce this.

Mr. BLUMENAUER. Again, I don't want to trap you, but I would like to be able to do a deeper dive on that. The DEA, according to published reports, was circulating on Capitol Hill when Mr. Massie and I had an amendment that would allow just research on industrial hemp, had talking points from the DEA widely circulated for people to argue against a legislative initiative. Now, there are certain arguments that one might make about agencies lobbying, and I don't want to get there, but it just speaks to me in terms of a serious question about prioritization.

You've got a tough job. We don't want drugs killing our people. Marijuana doesn't appear to be killing our people. We've got real problems ahead of us. I'd like to have answers to my questions so that I can understand how DEA prioritizes our scarce resources.

Mr. HARRIGAN. I'd be happy to.

Mr. BLUMENAUER. Thank you very much. I really appreciate it.

Mr. HARRIGAN. Thank you.

Mr. MASSIE. I suppose I can yield myself more time if we have no other Republicans here right now.

I'll yield myself 5 minutes.

Question, what is the DEA's role and responsibility in Federal marijuana enforcement in the two States that—where it's been legalized?

Mr. HARRIGAN. Again, as I had alluded to earlier, sir, DEA is the enforcement arm of the President's National Drug Control Strategy. We have agents in—obviously, in the States of Colorado and Washington, but again, due to limited resources and prioritization, we go after the world's most prolific drug-trafficking organizations, whether they're trafficking cocaine, marijuana, heroin, methamphetamine. So, again, we continue to do what we've done for the past 40 years, since DEA became an agency in 1973, under President Nixon. We continue to target those that have—those organizations that have the biggest impact on our citizens.

Mr. MASSIE. What percent of your budget is spent on marijuana laws, enforcement of those?

Mr. HARRIGAN. Sir, that is very difficult to estimate. Again, these organizations that we target, we investigate and we prosecute with our friends from the U.S. Attorney's Office and State and local jurisdictions are poly drug. Very rarely do you get an organization that's only going to traffic in marijuana. Typically they'll traffic, like I said, poly drugs, whether it's cocaine, heroin and marijuana. So, again, percentage-wise, it would be very difficult to come up with a precise amount, but again, these organizations make quite a bit of money from marijuana trafficking.

Mr. MASSIE. Well, in speaking to marijuana specifically, what percent of your budget is used for marijuana eradication efforts?

Mr. HARRIGAN. Well, again, we get approximately through the DCE/SP program, which I had mentioned in my opening statement, Domestic Cannabis and Eradication/Suppression Program, we get approximately \$17 million, but of that, it goes to our State and local counterparts, and that's used for things such as air wing support helicopters, training, local police overtime for State and local officials, so that money goes out to the respective States in that manner.

Mr. MASSIE. Do States like Colorado, for instance, forego that money now?

Mr. HARRIGAN. No, they don't.

Mr. MASSIE. So they're still accepting marijuana eradication funds?

Mr. HARRIGAN. Yes, they do. DCE/SP funding, sir.

Mr. MASSIE. Okay. That's all the questions that I have.

Mr. CONNOLLY. Mr. Chairman, would you—

Mr. MASSIE. Yes, sir.

Mr. CONNOLLY. —yield for a second.

Mr. MASSIE. I will.

Mr. CONNOLLY. Thank you.

I think your questioning is very apt. I think we need to know. I think DEA and other law enforcement agencies are going to have to disaggregate what do you spend on marijuana eradication? What do you spend on marijuana law enforcement versus other kinds of drugs? I understand at times it can be conflated, but, for example, wouldn't it be nice to know that when we're dealing with illegal cartels, organized crime, what percentage of their revenue is based on marijuana? You know, because the argument has been made before that, well, illegal syndicates, it's hard to do. Well, in prohibition, we did it. When we ended prohibition, we didn't legalize prostitution and illicit gambling and other sources of revenue of organized crime. So I think it would be a very good thing to know so we understand, again, going back to that word "efficacy," how effective are our efforts in fact and how does it guide us as we consider policy changes moving forward?

So I thank you thank you for your question, Mr. Chairman.

Mr. MASSIE. Thank you.

Mr. HARRIGAN. So, Ranking Member, if I may respond, and it's a very good question and we do—we would be able to come up with some statistics where—cases where we had resources, manpower, funding directed specifically at marijuana organizations, but again, the overwhelming majority of the time, you know, the same organizations that traffic marijuana traffic, you know, the cocaine, the heroin, so we're not going to break up these organizations. It doesn't make sense from an investigative standpoint and from a prosecutor's standpoint, either, but we will certainly work on getting you some numbers, Ranking Chairman.

Mr. MASSIE. Could you give us a rough idea of the breakdown between domestic efforts and international efforts or efforts at the border?

Mr. HARRIGAN. Yeah. In terms of just—I need just a little more specificity, sir.

Mr. MASSIE. Marijuana, the war on—yeah, war on drugs as pertains to marijuana.

Mr. HARRIGAN. Well, first, if I may mention, the war on drugs, we don't—DEA, many of our State and local counter parts, I don't want to speak for the U.S. attorneys either, but nobody uses “war on drugs” anymore, to be quite honest with you. We've come to the realization years ago that we're not going to arrest ourselves out of this problem. We have to work with Members of Congress, with healthcare professionals, with medical professionals, with teachers. That's the way you get the word out.

Now, as far as a war on drugs, you know, maybe some countries around the world, you could classify it as a war on drugs where maybe drug—where narcotics isn't a law enforcement matter, maybe it's a national security matter; then perhaps it's a war on drugs, but here, sir, I contend strongly it is not a war on drugs.

Mr. MASSIE. Okay. Back to the original question. Do you—do we spend money—do we spend taxpayer dollars trying to eradicate marijuana overseas outside of our borders?

Mr. HARRIGAN. Eradication overseas?

Mr. MASSIE. Yes.

Mr. HARRIGAN. No. And, again, you would have to have ask State Department more specifically for that. I know there are programs, INL over at the Department of State, that provides funding to various countries around the world.

Mr. MASSIE. I'd presumed you'd be coordinated with them.

Mr. HARRIGAN. Well, some of them, yes, absolutely, but, again, they're in countries—we're not in every country that State Department is. We have, I believe it's 87 offices in 68 countries around the globe, so obviously, that is not an all-inclusive list.

Mr. MASSIE. My time has expired.

And I'll yield 5 minutes to Mr. Cohen.

Mr. COHEN. Thank you, Mr. Massie. Thank you.

First of all, I'd like to mention that one of the smartest men in the world is Dr. Francis Collins, who is the head of the NIH and head of the human genome project. He said this weekend he'd like to study marijuana a little more because he's concerned about the possibility, possibility, never shown, of lung cancer because people inhale deeply and because he thinks youth shouldn't use it, which I certainly agree with—Mr. Blumenauer made that point—because IQ's have gone down for kids who smoked marijuana. Indeed, they shouldn't do tobacco, alcohol, and some say seen and not heard, but that's neither here nor there.

But he said, I don't want to sound like one of these people that says marijuana's evil; I don't think it is. That's Dr. Francis Collins, the number one maybe in—one of the most intellectual, brilliant people in the world on research science in these things, A.

B, Mr. Harrigan, you've been in this business now for close to 30 years? Since 1987, you started at the DEA? How have you—

Mr. HARRIGAN. Yes, I started when I was 3 years old.

Mr. COHEN. Right. How have your views changed on marijuana in those 30 years?

Mr. HARRIGAN. To be quite honest with you, sir, very little.

Mr. COHEN. I was afraid of that.

Mr. HARRIGAN. I see the devastation.

Mr. COHEN. That's enough. The fact that it's changed very little says a lot.

Mr. HARRIGAN. Do you want me to respond to your question, sir?

Mr. COHEN. No, sir, because we have limited—

Mr. HARRIGAN. I'd be happy to.

Mr. COHEN. We have—I know you would. We have limited time. The fact that it's changed very little shows that you haven't kept up with society. You haven't kept up with science, and it's part of the problem—

Mr. HARRIGAN. Science and medical I do keep up with, sir.

Mr. COHEN. All right. You mentioned in your statement that—and read me back that sentence, "It insults our common values." I want you to read me what you said.

Mr. HARRIGAN. Yes, sir. I believe this is the section you're referring to: We also know that marijuana destroys lives and families, undermines our economy and insults our common values.

Mr. COHEN. What are the common values it insults?

Mr. HARRIGAN. For me, sir, as—

Mr. COHEN. No. For—for—

Mr. HARRIGAN. I will tell you. I will tell if you let me—

Mr. COHEN. You said, "We know." You're speaking as the clairvoyant voice of America. What are our common values?

Mr. HARRIGAN. Well, I would venture to guess all of law enforcement, just about every single parent out there as well. Again—

Mr. COHEN. Every single parent?

Mr. HARRIGAN. Yes, every single parent. It's based on, again, medical, sir, and scientific fact, not public opinion. Okay. I am not the medical expert, as I said before. Everything that I do is based on my 30-plus years of law enforcement.

Mr. COHEN. Let me stop you for a minute. You said it insults our common values. What is the value it insults?

Mr. HARRIGAN. What is the value it insults?

Mr. COHEN. Yeah. You said this—

Mr. HARRIGAN. Do we have all—I could easily go on and on, Congressman Cohen.

Mr. COHEN. You haven't started yet.

Mr. HARRIGAN. Well, if you continue to interrupt me, I would be happy to address your question.

Mr. COHEN. Answer my question, sir.

Mr. HARRIGAN. Yes, it—you know what, from a bare minimum, as a parent, from—as a former educator, as a law enforcement official for all these years, I have seen the devastation that marijuana has caused not only on individuals, on families and communities.

Mr. COHEN. And that—what's our common value, though? You still haven't stated the common value. And the fact is 55 percent of Americans are in favor of decriminalization or legalization. I have got to imagine some of them are parents or the other 45 percent are really active. I mean, your statement that all parents are against this is ludicrous. What do you think, people that are in favor of decriminalization or—

Mr. HARRIGAN. I didn't say—

Mr. COHEN. —policy—

Mr. HARRIGAN. I said—

Mr. COHEN. —don't procreate?

Mr. HARRIGAN. I said most parents—

Mr. COHEN. You said all.

Mr. HARRIGAN. —would be opposed to this.

Mr. COHEN. And most is wrong, too; 55 percent of America.

Mr. HARRIGAN. Are they all parents?

Mr. COHEN. I don't think that the polls went into that, but I suspect a whole bunch of them were. It's not just the psychiatrists and the Jews and the single people. Let's get beyond Richard Nixon.

Let me ask you this. Let me say this to you: Recreational use, if you look in the Wikipedia, recreational drug use is defined as the use of a drug with the intent of enhancing life, increasing euphoria, blocking unhappy memories, or creating pleasure.

It's your agency that talks about recreational marijuana. I'm not quite sure recreational. To me, that's badminton or bowling or golf. But if it's in enhancing euphoria, blocking unhappy memories or creating pleasure, does that insult our values?

Mr. HARRIGAN. Yes, it does.

Mr. COHEN. So euphoria is not an American value, and unhappy memories being blocked is not an American value, or creating pleasure?

Mr. HARRIGAN. Not through smoking a marijuana joint, in my opinion, sir.

Mr. COHEN. In your opinion, yes, sir.

Mr. HARRIGAN. Yes. And, again, I am neither a medical professional or a healthcare professional.

Mr. COHEN. How much money has the DEA gained from asset forfeiture involved in marijuana cases?

Mr. HARRIGAN. Again, that would be difficult to—

Mr. COHEN. Well, then get the information for me, please. I want to know how much money you benefit, the DEA, from asset forfeiture laws, which make for cash register justice, from enforcing marijuana laws. That would be very interesting for us to know. And—

Mr. HARRIGAN. I will be happy to get that.

Mr. COHEN. Have you read the Schaefer Commission Report?

Mr. HARRIGAN. No, I have not, sir.

Mr. COHEN. Forty years old, still valid. I recommend you read it. I'd advise you to take a look at it.

Mr. HARRIGAN. I certainly will.

Mr. COHEN. Thank you. And let me ask one last question, Mr.—give me time, just one second.

Your boss, Ms. Leonhart, spoke at the winter meeting of the Major County Sheriffs Association, and she spoke about the President and his remarks that marijuana's not more dangerous than alcohol, and she said her lowest point in 33 years at the DEA was learning that a hemp flag was flown over the Capitol on July the Fourth. Do you agree that flying a hemp flag over the Capitol should have been her lowest moment, or maybe the killing of a DEA agent or maybe somebody who died of a heroin overdose would have been—should have been her lowest moment?

Mr. HARRIGAN. Yeah. Well, I don't know if she said it exactly as you quoted it.

Mr. COHEN. This is a quote.

Mr. HARRIGAN. But it is troubling. I absolutely agree with the administrator.

Mr. COHEN. And do you disagree with the—do you agree with her that marijuana is more—is not more dangerous than alcohol?

Mr. HARRIGAN. Again, marijuana is a Schedule I controlled substance that Congress has passed, Congress has agreed to. I am—

Mr. COHEN. We're not talking about that.

Mr. HARRIGAN. —the enforcement arm.

Mr. COHEN. Marijuana as a—standing on its own, is it worse than alcohol, that kills tens of thousands of people and causes much violence and cirrhosis of the liver and the DT's?

Mr. HARRIGAN. Again, marijuana is a Schedule I controlled drug.

Mr. COHEN. You're not going to answer the question.

I yield back my time.

Mr. MICA. [Presiding.] So that was a—did you say—was that over the Capitol or the White House that they flew the hemp flag?

Mr. COHEN. Best of my knowledge, it was the Capitol.

Mr. MICA. Okay. Well—

Mr. COHEN. Give them enough hemp, and they'll hang themselves.

Mr. MICA. Well, just part of our discovery effort here. Interesting.

What we're going to do is I've got a—we've got a couple of questions. I'll yield to anyone else who may have some wrap-up questions.

We got into—well, Mr. Harrigan, you said something, too, that interested me. You said the same people that are involved in—and I can't remember whether you said cocaine, heroin, but other tough, maybe it was meth, are—were also marketing marijuana and that this is—that was the indication I got. I don't know if that's what you meant. And that the same—I think—I thought you said the same people are involved.

So is that the case? And—you see this from a law enforcement standpoint. Is marijuana sort of a sideline with bad guys who are dealing this—these other drugs?

Mr. HARRIGAN. Well, Chairman, what we've seen time and time again, again, DEA, as I said a few times, we go after the worst of the worst when it comes to drug trafficking organizations, we call them CPOT's, consolidated priority organization targets. It's the old—we used to use kingpins. So, again, what we've seen—

Mr. MICA. But in the illegal substances, the tough—I mean, hard, hard drugs, though, you were talking about it's the same people dealing?

Mr. HARRIGAN. Yeah. Principally what we see, sir, these organizations, because, again, marijuana is a huge revenue generator, so—

Mr. MICA. Okay. Now, most of that marijuana, has that been coming from Mexico—

Mr. HARRIGAN. Yes.

Mr. MICA. —into the United States?

Mr. HARRIGAN. Yeah. What we see—

Mr. MICA. Now, you're seeing a shift now since—

Mr. HARRIGAN. That's right.

Mr. MICA. This reminds me a little bit when—some time ago when I dealt as chair of criminal justice drug policy, the Dutch liberalized their laws and then the Netherlands became, like, the narcotics capital of Europe and stuff went in there. I remember sitting

with the minister of justice, I think in the Hague, and they had opened this Pandora's box, and it came back to haunt them. Then they came back and criminalized—I mean, they cracked down, because it had just attracted other elements, too, in addition to, you know, they have a very liberal marijuana policy.

So what about, like, is this encouraging—would this encourage people to go to Colorado and start farms? And it's going to cut into the Mexican market, but are we seeing yet or do you think we'll see domestic production now in the states with the liberalization? And that's going to be hard to contain in borders since, again, it's a fairly, oh, transferrable commodity. What do you—where are we, and what do you think we're going to see?

Mr. HARRIGAN. Well, Chairman, you sort of stole a little bit of my thunder there, because you're exactly right. We're seeing an increase in domestic production as well. Now, we—the majority of the heroin that's seized here comes from Mexico, but typically, that is low grade marijuana. I'm sorry. Marijuana, I meant. It's low grade marijuana. We have seen—we have information that the Mexican cartels are actually trying to improve the THC content to, again, counter—

Mr. MICA. Compete, yeah.

Mr. HARRIGAN. That's exactly right, sir. So, again, we're seeing an increase grown on private lands and indoor grows as well. We're seeing a little decrease of growing marijuana on public lands, but we have seen an uptick on marijuana grows on private lands under the guise usually of medicinal use and as well as indoor grow operations.

Mr. MICA. Okay. Then a couple of other little things. Now, we've seen the shift in youth from tobacco—Mr. Connolly and I were talking about it. And probably the marijuana is getting cheaper, because the tobacco's taxed and also our programs have been geared to stopping that, but now one of you testified, too, that it looks like that marijuana abuse in high school is exceeding tobacco abuse. Is that the case? Mr. Harrigan, are you seeing that?

Mr. HARRIGAN. Yes, sir.

Mr. MICA. Mr. Walsh?

Mr. WALSH. I don't know that particular statistic, but it is a concern to us that there is, in fact, a rise in marijuana use in high schoolers.

Mr. HARRIGAN. Yeah. Sir, Chairman, if I could just clarify.

Mr. MICA. Yes.

Mr. HARRIGAN. I guess what you had said, tobacco versus marijuana. That, I am uncertain as well. What we have seen is an uptick in marijuana use amongst high schoolers.

Mr. MICA. And we've heard the citations. I think the ranking member gave citations about the decrease and success we've had in tobacco.

Mr. Harrigan, I hate to put you on the spot, but welcome to a congressional hearing. Schedule I, what's your recommendation?

Mr. HARRIGAN. Well, again, sir, it's not made in a void, the determination of a drug in Schedule I. Typically what happens, you know, a petition will be submitted. There will be an eight-factor analysis by DEA. And then HHS will receive it, and they have

their medical experts, their scientists do an eight-factor analysis as well.

Mr. MICA. Is that ongoing now or does anyone know? Is anyone—

Mr. HARRIGAN. As far as marijuana. I am not aware of any pending application, sir. We—DEA has—

Mr. MICA. But you would recommend against it, changing it from Schedule—

Mr. HARRIGAN. Yes. Absolutely.

Mr. MICA. Mr. Walsh?

Mr. WALSH. Chairman, there's a process, and it's—it goes to HHS and the FDA—

Mr. MICA. Right.

Mr. WALSH. —for recommendation back to the DEA administrator. And at this point, I believe there may be a petition pending. I'm not 100 percent.

Mr. MICA. So it would come back to you. Would you have final authority or just you weigh in?

Mr. HARRIGAN. Well, again, yes, sir. We base it—as John just alluded to, we base it on recommendations, too, from HHS, from FDA and NIDA. The administrator will take it under consideration.

Mr. MICA. I just got an email as we're talking that the District of Columbia has just voted to, I guess, liberalize some of its marijuana policy as we're holding this hearing. I hope we didn't influence them, but it looks like the conflict is—and the chaos, again, in policy is becoming an even wider spread here.

Mr. WALSH. Mr. Chairman, if I could—

Mr. MICA. Yes.

Mr. WALSH. —make one comment about the scheduling process. It goes to the FDA, recommendations come back—

Mr. MICA. Okay.

Mr. WALSH. —based on a series of factors that include efficacy as well as the potential for abuse. Then it comes back to DEA. And the administrator, I believe, has been delegated the authority to make the final decision by the Attorney General.

Having said that, when Mr. Harrigan is describing that process, in the past, the DEA has—has turned down those petitions. To the extent that the FDA is continuing to look at these studies and providing recommendations to the administration, I don't think anything is foreclosed. I know that the position of the DEA up to now has been not to reschedule, but things change over time. I'm not saying that they would, so—

Mr. MICA. From hearing to hearing, they're changing. So, well—

Mr. HARRIGAN. Chairman, if I could just clarify, though. DEA has never rejected an application that was approved by FDA and NIDA. So a little distinction there, but we've—

Mr. MICA. So we need to talk to FDA and NIDA what they're doing, what they think. And, again, that's out of your—not in your—

Mr. HARRIGAN. Right.

Mr. MICA. —your end.

Just to wrap up, this is kind of interesting point here that I've kind of viewed in my history, and I've been away from the—you

know, having the jurisdiction, but I deal in transportation and, you know, I chaired that committee and subcommittees. One of the things I did when I took over transportation was try to look at how we're—I mean, you want to talk about killing people; it's the automobile. It was about 43,000 people were dying. We got that down to, I think, 33,000. We did some things that made some changes in the way people conduct themselves.

Half of the deaths, and I don't know, it went back up again, I guess, of late, but half the deaths were related to alcohol. And I know there's a reporting mechanism, but I don't honestly know, is there a reporting mechanism for substance abuse such as marijuana or other substances that have impacted the deaths, because that's a pretty big number? A lot of people who use some of these substances, marijuana and others, mix it with alcohol or whatever or—and I don't know how many people have died driving a car that are blown out with this fairly potent marijuana.

Could you tell me, do you know if that's—we inventory that? I would like—and if we don't, maybe I should look at trying to get—gather some data. They always say, well, this doesn't kill anyone, but do we really know who's going down, say, even in the thousands of traffic deaths?

Mr. Harrigan?

Mr. HARRIGAN. Sir, one statistic I do have, and I'll have to find the citation for you, but it says 28 percent of fatally injured drivers test positive for marijuana.

Mr. MICA. Twenty-eight percent.

Mr. HARRIGAN. Twenty-eight percent.

Mr. MICA. I had not heard—

Mr. HARRIGAN. Now, again, I will get the citation—

Mr. MICA. Okay.

Mr. HARRIGAN. —and the requisite study for you, sir.

Mr. MICA. And you don't know if it's required in the reporting or—I guess they would do a blood test in a fatality, so the information is available someplace.

Mr. HARRIGAN. Right.

Mr. MICA. Maybe that's where they gather that information.

Mr. Walsh?

Mr. WALSH. You know, my information, Chairman, is that the reporting is not as consistent—

Mr. MICA. Okay.

Mr. WALSH. —in that regard as it is for alcohol-related deaths and that there is some question, particularly if there's not a fatality, a blood test may not always be taken.

Mr. MICA. Of course, we're talking fatalities versus hundreds of thousands of other wrecks and injuries.

Mr. WALSH. And I would just—I would note, and I believe the DEA has the same concern, that we are highly concerned about the increase in the rate of drugged driving, and in Colorado, it's an issue that we're facing as well right now.

Mr. MICA. So, finally, Harrigan, I guess you and I are on the same plane. You view this as a gateway drug, marijuana?

Mr. HARRIGAN. Well, Chairman, that's a great question. I believe more testing needs to be done. I don't think it can definitively say. It is certainly addictive. As far as a gateway drug—

Mr. MICA. So you don't know and——

Mr. HARRIGAN. —I think there still needs to be——

Mr. MICA. —that's fine.

Mr. HARRIGAN. —more research.

Mr. MICA. And that's fine.

Well, we're going to hear from some of the experts where—again, we've got a little bit different product on the market.

And, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I would just note the chairman talked about the Dutch experience. Rand Corporation studied the Dutch experience, and two interesting facts with legalization: Dutch citizen cannabis use was comparable and slightly lower to its neighboring countries, and secondly, Rand—the Rand study found no evidence of a gateway impact with the legalization of cannabis. The opposite, actually. So——

Mr. MICA. When was the study conducted?

Mr. CONNOLLY. Fairly recently, I believe. We'll be glad to get the study—2010. Yeah.

So we can all have our opinions, but, you know—and with respect to 28 percent of fatal car accidents, I sure would like to see that study, because I've seen studies that suggest that the impairment level, not that one is advocating it, but actually, when you look at statistical comparisons of impairment on driving under marijuana use versus other, you know, controlled and noncontrolled substances, is fairly moderate, but I'd be glad to look at the evidence.

Mr. Harrigan, do you believe tobacco has a high potential for abuse?

Mr. HARRIGAN. Again, sir, I can't comment as a law enforcement official. I certainly—what I see, I'm not a medical professional. I'm not a healthcare professional. But, you know, literally thousands, hundreds of thousands of people have died as a result of tobacco use.

Mr. CONNOLLY. And you would agree it's addictive? It can be—it can be addictive?

Mr. HARRIGAN. Yes, sir.

Mr. CONNOLLY. Have you ever had—are you aware of ever a doctor prescribing a carton of cigarettes as a medical—for a medical condition?

Mr. HARRIGAN. I am not, no, sir.

Mr. CONNOLLY. Do you believe there's an accepted safe use of tobacco under medical supervision?

Mr. HARRIGAN. Again, sir, I'm—if you're asking me to comment as an agent, I assume if it's under the right protocols, if it's—you have medical and scientific experts overseeing, but again, I would have to defer to the medical experts on something like that.

Mr. CONNOLLY. Probable answer is no. So why wouldn't tobacco, in light of those—the answers to those questions, why wouldn't tobacco be a Schedule I narcotic?

Mr. HARRIGAN. Again, that's a decision that's made by—in conjunction with FDA and NIDA and HHS, sir.

Mr. CONNOLLY. In your testimony, you disparaged public policy based on public opinion.

Mr. HARRIGAN. Uh-huh.

Mr. CONNOLLY. As a student of history, why do you think prohibition failed?

Mr. HARRIGAN. Why did prohibition fail? I don't—

Mr. CONNOLLY. We actually had to have a constitutional amendment to repeal prohibition. With the best of intentions, after a century of activism by well-meaning people who saw the ravages of alcohol on men, eating up their paychecks, on women and orphans being thrown on the street and so forth, you know, the Temperance League finally reaching its own and all that, and after a decade of experience, it was repealed. Why—you're a law enforcement man, Mr. Harrigan. Why do you think we had to repeal prohibition?

Mr. HARRIGAN. Well, again, close to 100 years ago, sir, it was certainly a different world. And I think, obviously, I think what you're getting at is probably public opinion.

However, that being said, I think now, almost 100 years later, we do have organizations, such as the DEA, such as HHS, NIDA, FDA, that can make—draw logical conclusions based on medical and scientific fact—

Mr. CONNOLLY. I agree.

Mr. HARRIGAN. —not public opinion.

Mr. CONNOLLY. I agree. I don't think that every law on the books should be a matter of public plebiscite. I certainly agree with you.

However, you would agree, would you not as—given your background as a cop that respect for laws is also an important part of the culture of law enforcement; that, I mean, if we have a public that totally disdains a law or significantly disdains a law, awfully hard to enforce it, makes the job of the cop on the beat much tougher. Would you not agree?

Mr. HARRIGAN. It does make it tougher, sir, but that's not to say it's right.

Mr. CONNOLLY. Well, going back to prohibition, might you not agree that the broad disdain for prohibition among the American public had a lot to do with why we had to pass a constitutional amendment to repeal it, because it created a culture of disrespect for the law and affected other laws that were terribly important?

Mr. HARRIGAN. But, again, I think, sir, that is what Congress is here to do. If they determine that the laws need to be changed, the laws need to be changed. Again, DEA's charge, our mission is to enforce the Federal narcotic laws.

Mr. CONNOLLY. Mr. Walsh, the fact that 20 States have changed their laws with respect to marijuana and two have actually changed their laws to allow some recreational use, including your beloved home State—

Mr. MICA. And the District—

Mr. CONNOLLY. And now the District of Columbia.

Mr. MICA. Within the last hour.

Mr. CONNOLLY. That—you know, I guess we could continue to take the position that that doesn't make it right and that doesn't change a thing, it's still a substance I narcotic. It's—you know, it needs to be—people need to be arrested and incarcerated after conviction for use and possession or for growing, but the fact of the matter is, that's a lot of States telling us something else about—I mean, these are legislators, these are voters telling us something

else about their views on marijuana. Surely we at least have to take cognizance of it as we think through future policy, don't we?

Mr. WALSH. I think, Congressman, that we do need to take it into account, but I want to say something that I think is really important, and I—with respect to our relationship with the DEA on these issues. Our focus is on those eight Federal priorities. DEA walks with us in lock step on those priorities. They support us. They support the prosecutions that we bring that are focused on true Federal interests, those eight priority areas. That takes into account the fact that State laws may vary from location to location.

DEA is also working with us to address the sort of evolving marijuana landscape on the ground. Over time—you know, we've always counted on State and local law enforcement to assist us in addressing any drug problem. We continue to do that. When State and local laws change as drastically as they have in some places, that changes the landscape for DEA. It changes the landscape for us. We do take it into account, but the work that DEA does with us has always been focused on drug-trafficking organizations and sophisticated operations that pose very serious public safety risks.

So I feel duty bound really to defend how DEA has responded on the ground and our relationships with them in Colorado to try to address these things, even acknowledging that the point that you make, Congressman, about changing public opinion is a real one.

Mr. CONNOLLY. And I—listen, I'm a skeptic about legalization and decriminalization. I'm—you know, so my questions are much in the category of devil's advocate for you two, but I'm not convinced one way or the other, but I am troubled by the statistics this hearing has forced me to look at. And that's why I said there are two questions for me: Efficacy. Is it working? Because you can be right as rain and feel good about the high principals you're espousing, but if the—but if it's in fact a failing policy, I don't think that serves any good public good. And secondly, the issue of equality. And I hear what you say about the eight areas you want to focus on, and I applaud the fact that you want to go after the cartels and the organized crime and try to get them; they're vicious. They're violent. They've destroyed whole communities and destabilized the southern part of our border and the northern part of our neighbors. But the fact of the matter is 750,000 people in this country, not all organized crime, got arrested last year for marijuana use or possession. And so the inequalities of law enforcement domestically continue.

Mr. WALSH. But—

Mr. CONNOLLY. And if you look at who is in prison for this reason, it's three-quarters nonwhite.

Mr. WALSH. Congressman, I do want to clarify one thing, though. The 750,000 arrests number that you're putting out there reflects local, State and Federal law enforcement. A lot of—the vast majority of those arrests are pursuant to State law and local law. That's not something that DEA is enforcing on a day-to-day basis. What they do with us, the Department of Justice, is focus on the sophisticated operations.

Mr. CONNOLLY. But, Mr. Walsh, it's all in the context. You can say that, and I agree, but on the other hand, the insistence that there's no scientific basis for questioning whether marijuana ought

to stay as a substance I narcotic certainly contributes to why State and local governments are enforcing it as if it were. That comes from the Federal level, not the State and local level. They're not making up the science here.

Mr. WALSH. But Congress—if I could go back to your point about public opinion, which I think is a valid one. There are many States in the United States where marijuana is not about to become legal or—whether for recreation or medical purposes, there are many States. So public opinion varies across this country.

We as Federal law enforcement have to enforce the law in a consistent way in every State. That's the challenge that we're facing right now. That's the challenge DEA faces in trying to fulfill their anti-drug mission that—and that we face in trying to fulfill our anti-drug mission. So that's why those eight factors are so important, is because they set forth in clear guidance, at least from my point of view, very clear guidance what are the true Federal interests. That's where we're putting our attention.

Mr. CONNOLLY. And I really appreciate that. And I think, with respect to public opinion, it's tricky business. As I said to Mr. Harrigan, I agree, you can't—you know, the law can't be a matter of just pure plebiscite; you know, let's all vote on the ones we like, and the ones we don't, and the ones we like, that will be the law.

But on the other hand, what has happened with respect to marijuana is public opinion is shifting and shifting radically away from the policies that have dominated this subject, at the Federal level anyhow, for the last 40-plus years. What does that mean for us? What cognizance should we take of that, and what, in light of that, should we re-evaluate, if anything?

And then there is the other data we've gone through in this hearing that I do think raises questions about where we are right now on marijuana use. And I thank the chairman for having the hearing, because it's most illuminating. And I thank you both for being here and for your service.

Mr. MICA. I might follow up with a question and ask you if you have the statistics. I keep hearing this 750,000 people arrested or in jail, of how many of those are State, local and then Federal. From what I ascertain from Mr. Harrigan is most of the Federal people are the big dealers, and they are—they're also involved in other things. You're not picking up people smoking a joint.

Mr. HARRIGAN. You're absolutely right, Chairman. Approximately 99.8 percent of Federal prisoners arrested for narcotics are in for drug trafficking, not possession.

Mr. MICA. Okay. Well, if you could give us—

Mr. HARRIGAN. Sure.

Mr. MICA. —that.

Mr. HARRIGAN. I'd be happy.

Mr. MICA. And maybe—I don't know if there's any breakdown of what they've—well, sometimes you get they plead to a lot lower offenses. That's one of the things.

Boy, I could get into this a little bit more, because now that I heard—are you involved at all, Harrigan, or they talk to you, Walsh, on—I heard that they're looking at a whole bank of granting, not amnesty, but sort of a blanket pardon for people who were on certain—convicted of certain offenses. I guess it was—was it

with cocaine? Crack cocaine? Yeah. Is that—you haven't heard anything on that?

Mr. WALSH. Certainly not some sort of a blanket pardon. I know that the—

Mr. MICA. We had—in fact, we entered in the record some commentary from some folks that said that's being considered, so because, again, we've changed the law, and there's a disparity in the conviction, and there were, like, 8,000 or something. That's a fairly significant number.

But that's—I'm diverting a little bit. If you can get us the—any exact information, Mr. Harrigan, again, on those cases, it would be good, because I keep hearing that number.

Mr. Massie, waiting most patiently.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Walsh, the 4-page memo of August 2013 has eight points in there, but it's—at the end of the day, it's only 4 pages, and it leaves it up to you, the U.S. attorneys, to exercise discretion on interpretation.

To my question to Mr. Harrigan a while ago about industrial hemp, isn't it the same section of the Controlled Substances Act that precludes marijuana federally that precludes growing of industrial hemp as well? Can you tell me what your interpretation of that is in Colorado? If you, for instance, came to know that a farmer in Colorado was growing industrial hemp, would you prosecute that case, for instance?

Mr. WALSH. Well, Congressman, I want to be careful about not speculating on future cases, because you—one thing I've learned is that there are factors and aggravating factors and mitigating factors; you just never know until the case actually arrives on your doorstep. But I would say this, the policy process that Mr. Harrigan referred to is underway right now. Until that's done, I'm certainly taking a very cautious approach to any prosecution that is purely hemp-based. We need to see how that turns out, and then we'll make decisions based on that final guidance that we get.

Mr. MASSIE. But if a case comes to you before that final guidance is issued, you would have to make a decision.

Mr. WALSH. It—depending on the circumstances, I think we might defer a decision, but I will tell you, clearly, without speculating on future cases, which is hard, that for the moment, we're waiting to see how the policy process plays out before we make those sorts of decisions.

Mr. MASSIE. Just—

Mr. WALSH. Which I hope will be a quick—quick and—

Mr. MASSIE. I hope it'll be quick, too. We're waiting in Kentucky, and we haven't decided to legalize marijuana, for instance, but industrial hemp could be a productive crop. I mean, I'm just trying to use layman's understanding of this 4-page document and the eight points and a little bit of common sense, but it seems like if growing industrial hemp didn't step on any of these eight points, which I don't think it would—I don't think it would lead to marijuana possession on Federal property, for instance, or violence and the use of firearms. Industrial hemp could be valuable; I don't think it's going to be that valuable that firearms will become involved. But it just seems to me that that—I would hope, in Colo-

rado, if a case comes to you that a farmer is growing industrial hemp and you don't have your guidance yet, that you would exercise the same sort of interpretation that I have, which—and this is a way, actually, we are trying to understand it in Kentucky, because it's not an academic exercise. We have people ready to grow industrial hemp, but they don't want to go to jail.

Mr. WALSH. Congressman, certainly without specific guidance on hemp, I have to exercise my overall prosecutorial judgment and discretion, and the memo that we received in August of 2013 influences that. It's not the final word.

Mr. MASSIE. Okay. Great. Thank you.

Mr. HARRIGAN, I want to follow up to a question that Mr. Mica asked and your answer to it. It was a statistic about what percent of automobile accidents, I think, where the users tested—or the occupants or drivers tested for marijuana usage. Was that number—what was the number?

Mr. HARRIGAN. Twenty-eight percent, Congressman.

Mr. MASSIE. Twenty-eight percent. Was that just fatalities or accidents?

Mr. HARRIGAN. Those were fatalities. Not just accidents; fatalities.

Mr. MASSIE. And so the test that they do, can it determine if, for instance, the level of THC in the person's body was high enough to degrade their judgment, or could it have indicated that somebody in the past month had used marijuana?

Mr. HARRIGAN. Sir, I don't know, to be honest with you. I'd be happy to get you some more information on that, but I know it's something they are trying to perfect that test to determine the THC level in someone's system.

Mr. MASSIE. So what—do you know what the standard procedure is in an autopsy to determine if somebody—at what level of THC was in their blood?

Mr. HARRIGAN. I don't, sir. No, I don't.

Mr. MASSIE. I would presume it's sort of taking the blood and doing the tests like if you were going to get a job or in a criminal case or something, but that it's hard for me to imagine that there's some test that undertakers or, you know, medical professionals do during the autopsy that could tell them whether the person was impaired or under the influence.

Mr. HARRIGAN. Well, again, it may be requested by the respective law enforcement component that was involved in that particular fatality.

Mr. MASSIE. So if the test showed that—all it indicated was that somebody in the last 2 years had used marijuana, maybe all that statistic shows is that 28 percent of people use marijuana.

Mr. HARRIGAN. It could. Again, I can't speculate as to what or not it shows, sir.

Mr. MASSIE. All right. Thank you very much.

Mr. HARRIGAN. Thank you.

Mr. MICA. Well, first of all, I want to thank our two witnesses, both for their patience and also for their participation and enduring the weather challenges we've had.

This is an incredibly lively, interesting, informative subject.

Mr. Connolly and I were just talking. We hadn't paid much attention to it before the beginning of this year, but just a lot of the information you provide helps enlighten us as to where things are.

We're continuing this. It's an interesting time, an interesting subject, and maybe a transition in our society, but we do have conflict in laws, State, Federal; policies that are all over the place, and we've got to sort it out, see where we're going and do the right thing.

But we thank you both for participating.

I thank—we've had some lively interest from other members. Fortunately the snow kept some of the others away, but—and we will leave the record open for 7 days, and we may have additional questions for you to respond for the record.

There being no further business before the Subcommittee on Government Operations, this hearing is adjourned.

[Whereupon, at 3:37 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

UNIVERSITY OF VIRGINIA SCHOOL OF LAW



Richard J. Bonnie
 Harrison Foundation Professor of Medicine and Law
 Professor of Public Policy
 Professor of Psychiatry and Neurobehavioral Sciences
 Director of Institute of Law, Psychiatry and Public Policy

February 25, 2014

Testimony in Support of SB 364

To the Senate Judicial Proceedings Committee

Criminal Law — Possession of Marijuana — Civil Offense

Dear Chairman Frosh and members of the Judicial Proceedings Committee:

It was my privilege to serve as Associate Director of the National Commission on Marijuana and Drug Abuse (1971-73), to participate in the Commission's deliberations, and to contribute to its influential reports. In *Marijuana: A Signal of Misunderstanding* (1972), the Commission recommended decriminalization of possession of marijuana for personal use. After my service at the Commission, I served as a drug policy adviser to the Nixon, Ford and Carter administrations and as Secretary of the first National Advisory Council on Drug Abuse (1975-80). The Commission embraced a robust public health perspective in its two reports and its recommendations regarding marijuana policy were predicated on cautious assumptions about the risks associated with its use by adolescents and with long-term, heavy use.

While embracing, unequivocally, a policy objective of discouraging marijuana use and containing its adverse public health consequences, the Commission unanimously concluded that the costs of criminalizing possession far outweighed the incremental benefits to the public health and safety that can be achieved by doing so. Those costs are even higher now: The Commission estimated that there were 200,000 marijuana arrests in 1970; the annual number of such arrests in recent years has been more than four times higher. The consequences of justice-system involvement for millions of young people over the last four decades should also be noted.

During the years immediately following the Commission's report (1973-77), 12 states decriminalized possession of marijuana before the momentum for sensible marijuana policy reform came to a surprising halt. Frankly, I am astonished that criminal penalties continue to be prescribed and imposed for simple possession of marijuana. It is long past time to repeal them. Nothing that has occurred over the past four decades has shaken the basic premises and rationale for the Commission's approach. Whether it is time for states to embrace a regulatory approach in lieu of continued prohibition is a much more difficult policy question and I do not intend to express an opinion on it in this statement.

Richard J. Bonnie

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